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BILLINGS DIV.

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Attorneys for Plaintiff

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT

YELLOWSTONE COUNTY

CW-07-1163-BLG-RFC

ROBERT MENSİK,

Plaintiff,

vs.

CITY OF BILLINGS,

Defendants.

DV
Case No. 07-1283

RUSSELL C. FAGG

**COMPLAINT AND DEMAND FOR JURY
TRIAL**

120/173654

COMES NOW the above-named Plaintiff, by and through its counsel of record, Liesel Shoquist, Shoquist Law Office, PLLC, and for his Complaint against the Defendant, states and alleges as follows:

FACTS COMMON TO ALL COUNTS

1. At all times material herein, Plaintiff, Robert Mensik, was a resident of Carbon County, Montana.

2. Upon information and belief, it is alleged that at all times material herein, Defendant, City of Billings ("the City") is a municipality of Yellowstone County, Montana.

SW

COUNT I – VIOLATION OF THE AMERICANS WITH DISABILITY ACT, 42

U.S.C. §§12101, et seq.

12. Plaintiff restates and realleges each and every allegation contained in Paragraphs 1 through 11 as though fully set forth herein.

13. Based on its knowledge of Plaintiff's diabetes, the City engaged in a practice of excluding Plaintiff from participating in essential job training in violation of the Americans with Disabilities Act.

14. Based on the knowledge of Plaintiff's diabetes, the City engaged in a practice of failing to provide accommodations to allow Plaintiff to participate in essential job training in violation of the Americans with Disabilities Act.

15. Based on the knowledge of Plaintiff's diabetes, the City engaged in a practice of failing to provide accommodations to allow Plaintiff to perform his regular job functions in violation of the Americans with Disabilities Act.

16. As a result of the City's practice of discrimination against Plaintiff based on his diabetes, Plaintiff has suffered damages including but not limited to wage loss, loss of benefits, humiliation and emotional distress.

17. The City acted with actual malice toward Plaintiff in violating the Americans with Disabilities Act.

COUNT II – VIOLATION OF THE MONTANA HUMAN RIGHTS ACT, MONT. CODE

ANN. §49-1-102, et seq.

18. Plaintiff restates and realleges each and every allegation contained in Paragraphs 1 through 17 as though fully set forth herein.

20. Based on the knowledge of Plaintiff's diabetes, the City engaged in a practice of failing to provide accommodations to allow Plaintiff to participate in essential job training in violation of the Montana Human Rights Act.

21. Based on the knowledge of Plaintiff's diabetes, the City engaged in a practice of failing to provide accommodations to allow Plaintiff to perform his regular job functions in violation of the Montana Human Rights Act.

22. As a result of the City's practice of discrimination against Plaintiff based on his diabetes, and its violations of the Montana Human Rights Act, Plaintiff has suffered damages including but not limited to wage loss, loss of benefits, humiliation and emotional distress.

23. The City acted with actual malice toward Plaintiff in violating the Montana Human Rights Act.

COUNT III - RETALIATION

COUNT III - RETALIATION

24. Plaintiff restates and realleges each and every allegation contained in Paragraphs 1 through 23 as though fully set forth herein.

25. Following Plaintiff's filing of a complaint with the EEOC, the City proceeded to retaliate against Plaintiff by engaging in a practice of refusing to allow Plaintiff to be a team member of the department by assigning him menial tasks and isolating him during the work day.

26. Following Plaintiff's filing of a complaint with the EEOC, the City, through Airfield Supervisor, Michael Glancy, retaliated against Plaintiff by ignoring Plaintiff and refusing to acknowledge him during team-building morning meetings.

1 27. Following Plaintiff's filing of a complaint with the EEOC, the City, through
2 Airfield Supervisor, Michael Glancy, retaliated against Plaintiff by treating Plaintiff with open
3 hostility.

4 28. The City's actions of retaliation and discrimination against Plaintiff, in
5 violation of Mont. Code Ann. §49-2-301, was done with actual malice.

6 **COUNT IV – WRONGFUL DISCHARGE**

7 29. Plaintiff restates and realleges each and every allegation contained in
8 Paragraphs 1 through 28 as though fully set forth herein.

9 30. The City's continued discriminatory and retaliatory actions against Plaintiff
10 prevented Plaintiff from actively pursuing and performing his regular job functions.

11 31. The City's continued discriminatory actions against Plaintiff caused the
12 working situation to become so intolerable that Plaintiff had no other reasonable alternative but
13 to voluntarily terminate his employment with the City.

14 32. As a result of these circumstances, Plaintiff was constructively discharged by
15 the City.

16 33. The constructive discharge is wrongful pursuant to Mont. Code Ann. § 39-2-
17 904.

18 34. As a result of wrongful discharge, Plaintiff has suffered damages including lost
19 wages and lost benefits.

20 35. The City engaged in actual malice in the constructive discharge of Plaintiff, in
21 violation of Mont. Code Ann. §§ 39-2-904 and 905.

22 **COUNT V – INVASION OF PRIVACY**

1
2 DATED this 11th day of October, 2007.

3 SHOQUIST LAW OFFICE, PLLC

4
5 By: Liesel Shoquist
6 Liesel Shoquist, Esq.
7 Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 COMES NOW, the Plaintiff, and hereby demands a trial by jury of all issues raised
10 herein.

11 DATED this 11th day of October, 2007.

12 SHOQUIST LAW OFFICE PLLC

13
14 By: Liesel Shoquist
15 Liesel Shoquist
16 Attorneys for Plaintiff
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